

**LISTING CONTRACT  
(EXCLUSIVE RIGHT TO SELL)**

Date: February 14, 2005

In consideration of services to be performed by CENTURY 21 At The Crossing  
(Broker/Company, hereinafter referred to as "Broker") for See further conditions

Seller appoints Broker as Seller's broker with irrevocable and exclusive right to sell, exchange, option, or lease the real property known as 7643 William Penn Place in Indianapolis Township, Indiana County, 46256 (zip code) legally described as: Bolander Woods Lot 16 (the Property).

This contract begins on February 14, 2005, and expires at midnight August 14, 2005 subject to the following terms and conditions:

List Price: \$ 2,000,000.00 Possession: Negotiable

Terms of Sale: The Property may be sold for cash or any of the following methods indicated below:

<input checked="" type="checkbox"/> Conventional Mortgage	<input type="checkbox"/> Conditional Sales Contract
<input checked="" type="checkbox"/> Insured Conventional Mortgage	<input type="checkbox"/> FHA
<input type="checkbox"/> Assumption of Existing Mortgage Balance	<input type="checkbox"/> VA
<input type="checkbox"/> Other	

Seller agrees to pay costs associated with financing not to exceed 0

Property Offered for Sale: The above list price includes the Property and all improvements and fixtures permanently installed and affixed thereto, except

Items of Personal Property included in the sale: No Personal property included

(A) EXCLUSIVE LISTING. The parties understand and agree that this is an exclusive right to sell, option, exchange or lease listing, and Broker shall be entitled to the commission hereinafter established which shall be payable upon the occurrence of any of the following events:

- (1) at the time the Property is sold, optioned, exchanged or leased by any person, including the Seller, to any person during the term of this contract or any renewal or extension thereof,
- (2) at the time Seller, Broker, or any other real estate licensee secures a buyer or lessee ready, willing and able to purchase, option, exchange or lease the Property for such price and terms as specified, or such other price or terms as Seller may accept,
- (3) at the time an agreement is entered into to sell, exchange, option or lease during the term of this contract or any renewal or extension thereof, and ultimately completed after the termination of this contract,
- (4) the Property is sold, optioned, leased, or exchanged by Seller or any other person within 30 days after termination of this Listing Contract to any person procured in whole or in part by the efforts of Broker, any cooperating broker, or Seller, provided, however, this extension clause shall not apply if this Exclusive Listing Contract terminates and the Property is listed exclusively with another licensed broker, or
- (5) at the time of default by Seller to any valid, fully executed, written agreement to sell, option, exchange, or lease the Property.

Any commission required to be paid under items (1), (3) and (4) above shall be due and payable at the closing of the transaction when title to or any interest in the Property is transferred to a buyer or lessee. Any commission required to be paid under items (2) and (5) above shall be due and payable upon demand by Broker. In the event that commission is not paid when due, then Broker shall be entitled to interest at the rate of 0 % per annum until commission is paid.

If the Seller and a Buyer sign a Purchase Agreement, Option to Purchase Real Estate: Lease or the closing of the sale of the Property will not take place until after the term of this contract, then this contract shall automatically be extended to coincide with the closing date or term of the lease.

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(B) BROKER'S COMMISSION. The broker's **commission** charged by the listing Broker for **services** rendered, with respect to any listing, is solely a matter of negotiation between Broker and Seller and is not fixed, controlled, suggested recommended or maintained by the Indiana Association of REALTORS, Inc., the local **Board/Association** of REALTORS®, the MLS (if applicable) or any person not a party to the **contract**. Seller has been advised of Broker's **cooperative** compensation policy.

Seller shall pay in **cash** to Broker for **services** a total **commission** as follows: (Check appropriate paragraph **number/numbers**)

- ☐ 1. \_\_\_\_\_ % of the **selling/exchange** price or option **selling** price, not less than \$ \_\_\_\_\_
- ☐ 2. In the event of a purchase option, the Seller agrees to compensate Broker \_\_\_\_\_ % of the consideration paid for an Option to Purchase.
- ☐ 3. In the event of a lease, the Seller agrees to **compensate** Broker \_\_\_\_\_ % of all amounts paid by a lessee to Seller over the term of the lease.
- ☒ 4. Other: ~~3% at purchase price of \$2,000,000-1.8 million, 3.1% @ purchase price of 1.8-1.65, 3.2% @ purchase price of 1.65-1.5 million, 3.33% @ pp of 1.5 m~~  
**\$50,000 flat commission**

(C) **COMMISSION IS LIEN; ATTORNEY FEES.** For purposes of this contract, the parties understand and agree that Broker's commission is deemed to be a share of the purchase money received by Seller, and Broker shall have a lien on the funds and a lien upon the Property until the commission is paid. If any action is filed in relation to this Listing Contract, the unsuccessful party shall pay to the successful party a reasonable sum for the successful party's attorney's fees and court costs.

(D) **EARNEST MONEY.** Broker is authorized to accept earnest money or any part of the purchase price and hold it in an escrow/trust account. In the event that Seller is to receive any portion of the earnest money, Seller authorizes Broker to keep any earnest money deposits up to the amount the commission would have been if the sale was completed in payment for Broker's expenses, services and advertising.

(E) **MLS INFO (IF APPLICABLE).** It is understood that the Broker may rely on the validity of the data pertaining to this Listing Contract which has been provided by the Seller, and the Seller agrees that Broker may disclose the data to a Multiple Listing Service ("MLS"), Internet or any advertising media and that the Broker may furnish notice to a MLS or other provider of all changes of information concerning the Property.

(F) **INFORMATION REGARDING PROPERTY.** Seller acknowledges that the information on the Listing Profile Sheet and Seller's Residential Real Estate Sales Disclosure Form (if applicable) is true and correct, and that Seller is the owner of the Property or is the authorized agent(s) of the true owner with complete and full authority to act on behalf of the owner(s). Seller further warrants that no other listing contract is now in force with any other broker. The Seller(s) or authorized agent(s) agree to indemnify, actively defend and hold Broker, Company and its agents harmless from any damages, loss, liability and expenses including attorney fees and costs, arising from incorrect information or failure to supply material information regarding the Property, including, but not limited to the condition of appliances, heating, plumbing, electrical, sewage, major defects in structure, mold and/or other environmental conditions or hazards, location of property lines, public and private restrictions on the use of the Property, any loss or liability in conjunction with this agreement or with Broker or other licensees showing the Property including, but not limited to, injuries suffered by other licensees or prospective buyers.

(G) **ENVIRONMENTAL CONTAMINANTS ADVISORY/RELEASE.** Seller acknowledges that Listing Broker, Selling Broker and all salespersons associated with Brokers are NOT experts and have NO special training, knowledge or experience with regard to the evaluation or existence of possible lead-based paint, radon, mold and other biological contaminants ("Environmental Contaminants") which might exist and affect the Property. Environmental Contaminants at harmful levels may cause property damage and serious illness, including but not limited to, allergic and/or respiratory problems, particularly in persons with immune system problems, young children and/or the elderly.

Seller agrees to consult with appropriate experts and accepts all risks for Environmental Contaminants and releases and holds harmless all Brokers, their companies and sales associates from any and all liability, including attorney's fees and costs, arising out of or related to any inspection, inspection result, repair, disclosed defect or deficiency affecting the Property, including Environmental Contaminants. This release shall survive the closing.

(H) **AGENCY DISCLOSURES.**

1. **Office Policy.** Seller acknowledges receipt of a copy of the written office policy relating to agency.
2. **Agency Relationship.** I.C. 25-34.1-10-9.5 provides that a Licensee has an agency relationship with, and is representing, the individual with whom the Licensee is working unless (1) there is a written agreement to the contrary; or (2) the Licensee is merely assisting the individual as a customer. Licensee(Broker) represents the interests of the Seller as Seller's agent to sell the Property. Licensee owes duties of trust, loyalty, confidentiality, accounting and disclosure to the Seller. However, Licensee must deal honestly with a buyer and disclose to the buyer information about the Property. All representations made by Licensee about the Property are made as the agent of the Seller.

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Seller is advised that the Property may be sold with the assistance of other Licensees working as buyer agents and that Licensee's company policy is to cooperate with and compensate buyer agents. Buyer agents are Licensees who show the Property to prospective buyers, but who represent only the interests of the buyer. Buyer agents owe duties of trust, loyalty, confidentiality, accounting and disclosure to buyers. All representations made by buyer agents about the Property are not made as the agent of the Seller.

3. **Limited Agency Authorization.** Licensee or the principal or managing broker may represent Buyer as a buyer agent. If such a Buyer wishes to see the Property, Licensee has agency duties to both Seller and Buyer, and those duties may be different or even adverse. Seller knowingly consents to Licensee acting as a limited agent for such showings.

If limited agency arises, Licensee shall not disclose the following without the informed consent, in writing, of both Seller and Buyer:

- (a) Any material or confidential information, except adverse material facts or risks actually known by Licensee concerning the physical condition of the Property and facts required by statute, rule, or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the Property by the parties.
- (b) That a Buyer will pay more than the offered purchase price for the Property.
- (c) That Seller will accept less than the listed price for the Property.
- (d) Other terms that would create a contractual advantage for one party over another party.
- (e) What motivates a party to buy or sell the Property.

In a limited agency situation, the parties agree that there will be no imputation of knowledge or information between any party and the limited agent or among Licensees.

Seller acknowledges that Limited Agency Authorization has been read and understood. Seller understands that Seller does not have to consent to Licensee(s) acting as limited agent(s), but gives informed consent voluntarily to limited agency and waives any claims, damages, losses, expenses, including attorneys' fees and costs, against Licensee(s) arising from Licensee(s)' role of limited agent(s).

- (I) **SELLER AUTHORIZATION AND COOPERATION.** Seller agrees to provide Broker with the required information necessary for entry into a MLS, Internet or other advertising media, to include electronic media and the use of any exterior/interior photos, if applicable. Seller will cooperate with Broker by permitting the Property to be shown at reasonable times and authorizes Broker to place and remove 'For Sale' and other signs on the Property.

1. Seller authorizes Broker and cooperating brokers, buyer brokers, Broker's personal assistants, contractors, inspectors, appraisers and others reasonably necessary to market the Property to enter the Property. Seller acknowledges that a buyer may enter the Property with contractors, inspectors or appraisers without being accompanied by Broker.
2. Seller will provide Broker with key(s) necessary to access the Property.
3. Seller authorizes Broker to have duplicate keys made.
4. Seller agrees not to rent or lease the Property during the term of this Listing Contract without written notification to Broker.
5. Seller agrees that Broker may work with buyer brokers to assist in performing Broker's duties according to the terms of this Listing Contract.
6. Seller authorizes Broker to disseminate all listing information as well as the price and terms of financing on a closed sale to members of the Indiana Association of REALTORS®, Inc., to other brokers upon request and to a MLS, Internet or any advertising media, if applicable, for publication.
7. Seller authorizes its utility companies to divulge all utility information to Broker and to provide copies of utility statements, if requested. Seller's utility companies are as follows: \_\_\_\_\_
8. Seller authorizes its lending institution to divulge all mortgage information to Broker and to provide copies of the note and mortgage, if requested. Seller's lending institution is \_\_\_\_\_ and the mortgage loan number is \_\_\_\_\_
9. Seller ☒ does ☐ does not authorize Broker to disclose the existence of multiple offers to Buyer.

If Seller's mortgage is subject to a pre-payment penalty, Seller agrees to give timely written notice to Seller's lender that the mortgage is to be prepaid from the sale proceeds of the Property. It is acknowledged that Seller's failure to give this notice may result in a pre-payment penalty to be paid by Seller.

- (J) **LOCKBOX/KEY AUTHORIZATION/USE.** To facilitate access to the Property, a lockbox installation ☐ is ☒ is not authorized, subject to the following acknowledgments/conditions:

1. Seller will provide keys.
2. Seller will safeguard valuables.
3. Seller acknowledges Broker is not an insurer of Seller's real estate and personal property and waives claims against Broker and Broker's authorized persons for loss and/or damage to any property pursuant to showing the Property. Seller further agrees to indemnify and hold harmless Broker and all authorized persons from claims by third parties from all loss and/or damage.

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4. Seller instructs Broker to make reasonable efforts to notify Seller of showing requests. If Seller cannot be contacted to schedule a showing, Seller ☐ wants ☐ does not want Broker to use the lockbox/key for access to the Property.
5. Where a tenant/lessee occupies the Property, it is Seller's full responsibility to obtain tenant/lessee consent to allow the use of a lockbox/key.

(K) **FAIR HOUSING.** The parties acknowledge that the Fair Housing Act prohibits discrimination in housing because of race, color, national origin, religion, sex, familial status, and handicap.

(L) **ADDITIONAL PROVISIONS.**

1. Seller understands the terms of this Listing Contract and has received a copy.
2. The parties to this contract agree that it contains the entire agreement of the parties and cannot be changed except by their written consent.
3. The parties to this contract agree that it is binding upon the parties' heirs, administrators, executors, successors and assigns.
4. Seller acknowledges receipt of an estimate of selling expenses.
5. Seller represents that Seller has the capacity to convey the property by a general Warranty Deed or by
6. The parties to this contract agree that this contract may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this contract may be transmitted between them electronically or digitally. The parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the parties. The original document shall be promptly delivered, if requested.
7. Broker may refer Seller to other professionals, service providers or product vendors, including lenders, loan brokers, title insurers, escrow companies, inspectors, pest control companies, contractors and home warranty companies. Broker does not guarantee the performance of any service provider. Seller is free to select providers other than those referred or recommended to Seller by Broker.
8. Broker is not and shall not be charged with the responsibility for the custody, management, care, maintenance, protection or repair of the Property nor for the protection or custody of any personal property located thereon, unless provided for in another written agreement.
9. Seller consents to receive communications from Broker via telephone, U.S. mail, email and facsimile at the numbers/addresses provided to Broker unless Seller notifies Broker in writing to the contrary.
10. Where the word "Broker" appears, it shall mean "Licensee" as provided in I.C.25-34.1-10-6.8.
11. Seller discloses to Listing Broker that Seller is licensed and holds License # \_\_\_\_\_

(M) **FURTHER CONDITIONS.**

Seller is Attorney General, State of Indiana, pursuant to the terms of the agreed  
order regarding sale of disputed real estate entered into in State of Indiana, ex rel  
Steve Carter, Attorney General of Indiana and the Indiana Family and Social Services  
Administration vs. Daybreak Management Corporation, et al, in United States District  
Court for the Southern District of Indiana, Indianapolis Division Cause Number IP  
02-0527.

SALESPERSON/AGENT

IN LICENSE # SELLER'S SIGNATURE

02/14/2005

DATE

CENTURY 21 At The Crossing

BROKER OR COMPANY NAME

IN LICENSE # PRINTED

02/14/2005

ACCEPTED BY: PRINCIPAL/MANAGING BROKER

SELLER'S SIGNATURE

DATE

PRINTED



Approved by and restricted to use by members of the Indiana Association of REALTORS®, Inc.  
This is a legally binding contract, if not understood seek legal advice. **Form #01.** Copyright IAR 2004



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## ADDENDUM

This Addendum is entered into by and between the **Office** of the Attorney General ("the State") and the entity designated as "Contractor", below.

WHEREAS, this Contract is being entered into under the terms of the Agreed Order Regarding Sale of Disputed Real Estate entered into in *State of Indiana, ex rel. Steve Carter, Attorney General of Indiana and the Indiana Family and Social Services Administration v. Daybreak Management Corporation, et al.*, in United States District Court for the Southern District of Indiana, Indianapolis Division, Cause No. IP 02-0527 C Y/L, which authorizes the State to sell the house located at 7643 William Penn Place, Indianapolis, Indiana.

The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in the attached Form Contract prepared by Contractor ("the Form Contract"). This addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document. Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving **precedence** and effect to this Addendum.

Contractor Name: Century 21 at the Crossing, Inc.

Contractor Address: 4929 East 96<sup>th</sup> Street  
Indianapolis, IN 46240

Title of Form Contract: Listing Contract (Exclusive Right to Sell)

Attached Form Contract consists of four (4) pages without terms on both sides.

Contract begins on February 14, 2005 and ends on August 14, 2005.

~~Total consideration for the term of the Contract is a commission of 3% of a purchase price of \$1,800,000 or greater, 3.1% of a purchase price or less than \$1,800,000 but at least \$1,650,000, 3.2% of a purchase price of less than \$1,650,000 but at least \$1,500,000, and 3.33% of a purchase price of less than \$1,500,000. This commission will be deducted from the sale price at closing.~~  
Total remuneration under this contract shall not exceed \$75,000. \$50,000.

### Deletions:

By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

- A. Any provision requiring the State of Indiana to provide insurance;
- B. Any provision requiring the State of Indiana to provide indemnity;
- C. Any provision providing the Contract to be construed in accordance with laws other than those of the State of Indiana;

- D. Any provision providing that suit be brought in **my** state other than Indiana;
- E. Any provision providing for resolution of Contract disputes;
- F. Any provision requiring the State of Indiana to pay any taxes;
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney's fees;
- H. Any provision modifying the statute of limitations provided by Indiana statute;
- I. Any provision relating to the time within which a claim must be made or suit brought;
- J. Any provision requiring payment of consideration in **advance** unless authorized by an exception in IC 4-13-2-20;
- K. Any provision limiting disclosure of the Contract in violation of the Access to Public Records Act, IC 5-14-3-3.5; and
- L. Any provision giving the Form Contract precedence over this Addendum.

**Additions:**

The following **terms** and conditions are incorporated into and made a part of the **Form** Contract:

**1. Consideration.** ~~Total consideration for the term of the Contract is a commission of 3% of a purchase price of \$1,800,000 or greater, 3.1% of a purchase price of less than \$1,800,000 but at least \$1,650,000, 3.2% of a purchase price of less than \$1,650,000 but at least \$1,500,000, and 3.33% of a purchase price of less than \$1,500,000. This commission will be deducted from the sale price at closing. Total remuneration under this contract shall not exceed \$75,000.~~ **\$50,000.** *TSC 62*

**2. Term.** ~~This~~ Contract shall be effective for a period of six (6) months. It shall commence on February 14, 2005 and shall terminate on August 14, 2005.

**3. Renewal Option.** This Contract may be renewed under the same terms and conditions subject to the approval of ~~the~~ Commissioner of the Department of **Administration** and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

**4. Access to Records.** Contractor shall **maintain** all **books**, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this contract. Contractor shall make such materials available at ~~its~~ offices at all reasonable times during the contract period, and for five (5) years **from** the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government. Copies ~~thereof~~ shall be **furnished** at no cost to the State **if requested**.

**5. Assignment; Successors.** Contractor shall not assign or subcontract the whole or **any** part of this contract without the State's prior written consent. Contractor may assign its right to receive payments to such third parties as Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State **thirty** (30) days in advance of any payment so

assigned. The assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.

6. Audits. Contractor **acknowledges** that it **may be** required to submit **to** an audit of funds paid through this agreement. Any such audit shall be conducted in accordance with IC 5-11-1, and audit guidelines specified by the State.

7. Authority to Bind Contractor. Notwithstanding **anything** in the contract to the contrary, the signatory for the Contractor represents that **he/she** has been duly authorized to execute **contracts** on behalf of the Contractor designated above and has obtained all necessary or applicable approvals **from** the **home office** of the Contractor to make this contract **fully** binding upon the Contractor when his/her signature is **affixed** and is not subject to home office acceptance hereto when accepted by the **State** of Indiana.

8. Changes in Work. The Contractor shall not commence any additional work or change the scope of work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws.

A. The **Contractor agrees** to comply with all applicable **federal**, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder **after** execution of this contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § **4-2-6 et seq.**, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the **Indiana State Ethics Commission**, or visit the Indiana State Ethics Commission **website** at <<<<http://www.in.gov/ethics/>>>>. If the contractor or its agents violate any applicable ethical standards, the State **may**, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to **penalties** under Indiana Code **\$4-2-6-12**.

C. The Contractor certifies by entering into this Contract, that neither it nor its **principal(s)** is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana **may be** withheld **from** payments due to the Contractor. Additionally, **further** work or payments may be withheld, delayed, or denied **and/or** this Agreement suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated **by** the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the **term** of such actions, Contractor agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Agreement. If a valid dispute exists **as** to the Contractor's liability or **guilt** in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor **may** request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

E. Any payments **that** the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, **as well as** comply with all health, safety, and environmental statutes, rules, or regulations in the **performance** of work activities for the State. Failure to do so is a material breach of the contract and grounds for immediate termination of the Contract and denial of **further** work with the State.

G. The Contractor hereby **affirms** that it **is** properly registered and owes no outstanding **reports** to the Indiana Secretary of State.

H. Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar Contractor **from** contracting with the State in the **future**, cancel existing contracts, withhold payments to setoff such obligations, and withhold **further** payments or purchases until the entity is current in **its** payments on **its** liability to the State and has submitted proof of such payment to the State.

**10. Condition of Payment.** All **services** provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, **as** determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state, or local law.

**11. Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, **memoranda**, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract, shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the



performance of ~~this~~ Contract, the Contractor shall be responsible ~~for~~ any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

**12. Confidentiality of State Information.** ~~The Contractor understands~~ and agrees that ~~data, materials, and information~~ disclosed to Contractor ~~may~~ contain confidential and protected ~~data~~. Therefore, the Contractor promises and assures that ~~data, material, and information~~ gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

**13. Conflict of Interest.**

A. As ~~used~~ in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," ~~means~~:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of ~~an~~ individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

B. The State may cancel this Contract without recourse by Contractor if ~~any~~ interested party is an employee of the State of Indiana.

C. The State will not exercise its right of cancellation under section B, above, if the Contractor gives the State an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The State ~~may~~ take action, including cancellation of this Contract, consistent with ~~an~~ opinion of the Commission obtained under this section.

D. Contractor has an **affirmative** obligation under this Contract to disclose to the State when ~~an~~ interested party is or becomes an employee of the State of Indiana. The obligation under this section extends **only** to those facts that Contractor **knows** or reasonably could know.

**14. Debarment and Suspension.** The **Contractor** certifies, by entering into this Contract, that neither it nor its principals are presently **debarred**, suspended, proposed for debarment, declared ineligible, or voluntarily excluded **from** entering into this Contract by any federal agency or by any department, agency or political subdivision of the State.

The term "**principal**" for purposes of this **Contract means** an officer, director, owner, partner, key employee, or other **person** with primary management or supervisory responsibilities, or a person who has a critical influence on or **substantive** control over the operations of the Contractor. The Contractor also **further** certifies that it has verified the suspension and debarment status for all subcontractors receiving **funds** under this Contract **and** is solely responsible for any **paybacks** and or penalties that might arise **from non-compliance**.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, **fails** to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

**16. Disputes.** **Should** any disputes arise with respect to this Contract, the Contractor and the State agree to **act** immediately to resolve such disputes. **Time** is of the essence in the resolution of disputes.

A. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor **fail** to continue to perform **its** responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a **result** of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) **working** days following **notification** in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise **furnish** a copy thereof to the Contractor and the State **within** ten (10) working days **after** presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, **within** ten (10) **working** days after receipt of the Commissioner's decision, a written **appeal**. **Within** ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, **the** parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

B. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or **more** invoices not in dispute in accordance with the **terms** of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**17. Drug-Free Workplace Certification.** The Contractor hereby covenants **and** agrees to make a good faith effort to provide and maintain a **drug-free** workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal **drug** violation occurring in the Contractor's workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, **termination** of this Contract **and/or** debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount **set** forth in this Contract **is** in excess of **\$25,000.00**, Contractor hereby **further** agrees that this contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive **Order** No. 90-5, April 12, 1990, issued by **the** Governor of Indiana. Pursuant to its delegated authority, the **Indiana** Department of Administration is requiring the inclusion of this certification in all contracts and grants **from** the State of Indiana in excess of **\$25,000.00**. No award of a contract shall **be** made, and no contract, purchase order or agreement, the total amount of which exceeds **\$25,000.00**, shall **be** valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor **certifies** and agrees that it will provide a **drug-free** workplace by:

A. Publishing and providing to **all** of its employees a statement **notifying** them that the **unlawful** manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will **be** taken against employees for violations of such prohibition;

B. Establishing a **drug-free** awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a **drug-free** workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may **be** imposed upon an employee for **drug** abuse violations occurring in the workplace;

C. Notifying all employees in **the** statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the **terms** of the statement; and (2) notify the Contractor of any criminal drug statute **conviction** for a violation **occurring** in the workplace no later than five (5) days after such conviction;

D. **Notifying** in writing the State within ten (10) days **after** receiving notice **from** an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a **drug-free** workplace through the implementation of subparagraphs (A) through (E) above.

**18. Force Majeure.** In the event that either party is unable to **perform** any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the **fault** of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall **immediately** give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days **from** the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**19. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that **funds** are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**20. Governing Laws.** **This** Contract shall be construed in accordance **with** and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**21. Indemnification.** Contractor agrees to **indemnify**, defend, and hold harmless the State and its agents, officials, and employees **from** all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor **and/or** its subcontractors, if any. The State will not provide such indemnification to the Contractor.

**22. Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall **not** be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any **injury** (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

### 23. Insurance.

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

- 1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$500,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the State.
- 2) Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative, a certificate of insurance prior to the commencement of this agreement. Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, an "all states endorsement" covering claims occurring outside the state of Indiana if any of the services provided under this agreement involve work outside the state of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
- 2) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this contract shall not be limited by the insurance required in this contract-
- 3) The insurance required in this Contract, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative.
- 4) Failure to provide insurance as required in this Contract is a material breach of contract entitling the State to immediately terminate this Contract.

C. The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to the commencement of this Contract.

**24. Licensing Standards.** The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting

standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If **licensure**, certification or accreditation expires or is revoked, the Contractor shall notify State immediately and the State, ~~at~~ its option, may immediately terminate this Contract.

**25. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, **oral** or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.

**26. Minority and Women Business Enterprise Compliance.** The Contractor agrees to comply fully with the provisions of the Contractor's MBE/WBE participation plan.

**27. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, ~~the~~ Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the **performance** of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, ~~because of race,~~ color, religion, sex, disability, national origin or ancestry. Breach of this covenant **may** be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance **with** applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of **services based** on race, color, national origin, age, **sex**, disability or **status** as a veteran.

**28. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Charles J. Todd, Chief Operating Officer  
Office of the Attorney General  
302 W. Washington Street, IGCS-5<sup>th</sup> Floor  
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to:

Timothy **Catton**  
Century 21 at the Crossing, **Inc.**  
4929 East **96<sup>th</sup>** Street  
Indianapolis, IN 46240

**29. Order of Precedence.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: **(1)** this Addendum; **(2)** the Form

Contract; (3) attachments prepared by the State; (4) attachments prepared by the Contractor.

**30. Payments.** ~~All~~ payment obligations shall be made in arrears in accordance with Indiana law, in part, IC 4-13-2-20 and state fiscal policies and procedures.

**31. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except **as** required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

**32. Progress Reports.** The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**33. Severability.** The invalidity of any section, subsection, clause or provision of this Contract **shall** not **affect** the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**34. Substantial Performance.** This Contract shall be deemed to be substantially performed only when **fully** performed according to its terms and conditions and any modification thereof

**35. Taxes.** The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor **as** a result of this Contract.

**36. Termination for Convenience.** ~~This~~ Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, **specifying** the extent to which **performance** of services under such termination becomes effective. The Contractor shall be compensated for **services** properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for **services** herein provided but in no **case** shall total payment made to the Contractor exceed the original contract price or shall any price **increase** be allowed on **individual line** items if canceled only in part prior to the original termination date.

**37. Termination for Default.** With the provision of thirty (30) days notice to the Contractor, the State **may** terminate this Contract in whole or in part, if the **Contractor fails to:**

1. Correct or cure any breach of this Contract;

2. Deliver the supplies or perform the **services** within the time specified in this Contract or any extension;
3. Make progress so as to endanger **performance** of this Contract; or
4. Perform any of the other provisions of this Contract.

**A.** If the State terminates this Contract in whole or in part, it may acquire, under the **terms** and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

**B.** The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to **agree** will be a dispute under the Disputes clause. The State may withhold **from** these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

**C.** The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**38. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

**39. Work Standards.** ~~The~~ Contractor shall execute its **responsibilities** by following and applying at **all** times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or **all** such individuals, and Contractor shall grant such request.

### **Non-Collusion and Acceptance**

The undersigned attests, subject to ~~the~~ penalties for **perjury**, that ~~W~~she is the Contractor, or that **he/she** is the properly authorized representative, agent, member or officer of the Contractor, that **he/she** has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of **his/her** knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that **he/she** ~~has~~ not received or paid, any **sum** of money or other consideration for the execution of this Contract other than that which appears **upon** the **face** of this Contract.

**The rest of this page is left blank intentionally.**



**In Witness Whereof**, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do **by** their respective signatures dated below hereby agree to the terms thereof.

**Century 21 at the Crossing, Inc.**

By: TIM O'CONNOR Timothy J. Carter  
Printed Name: Tim O'Conn TIMOTHY J CARTER  
Title: Partner Realtor  
Date: 2-9-05 2/9/05

**Office of the Attorney General:**

By: [Signature]  
Printed Name: Gregory F. Zalta  
Title: Chief Deputy  
Date: 2-14-05

**Department of Administration**

[Signature] (for)  
Earl Goode  
Commissioner  
Date: 2/15/05

**State Budget Agency**

[Signature] (for)  
Charles Schalliol  
Director  
Date: 2/25/05

**Approved as to Form and Legality:  
Office of the Attorney General**

[Signature] (for)  
Stephen Carter  
Attorney General  
Date: 3-2-05